

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SERENE RENEE THOMAS,
Plaintiff

-vs-

COMMISSIONER OF SOCIAL
SECURITY,
Defendant

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SA-23-CV-00045-XR

ORDER

On this date, the Court considered Plaintiff's Motion for Attorney's Fees filed on April 8, 2024. ECF No. 18. Because Plaintiff, as a prevailing party, is entitled to an award of fees incurred in prosecuting this action, and Defendant does not oppose an award of attorney's fees, *see* ECF No. 18, the Court **GRANTS** the motion.

On January 29, 2024, the Court accepted Magistrate Judge Elizabeth S. Chestney's Report and Recommendation (ECF No. 14), thereby vacating the Commissioner's decision and remanding to a new Administrative Law Judge for further consideration consistent with the Magistrate Judge's Report and Recommendation. *See* ECF No. 16. Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, Plaintiff then timely requested that Defendant reimburse the attorney's fees he incurred in achieving this result. ECF Nos. 18, 18-1. Defendant does not oppose the propriety of such an award or the amount claimed for attorney's fees. ECF No. 18 at 1, 3.

An award of attorney's fees under 28 U.S.C. § 2412 is to be based upon the prevailing market rate for the kind and quality of the services furnished, not in excess of \$125 per hour, unless the Court determines "that an increase in the cost of living or a special factor . . . justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A). Plaintiff seeks attorney's fees at an hourly rate of \$220 per hour, based on the Consumer Price Index from the Bureau of Labor and Statistics, and the Court finds

that the increase from \$125 per hour is justified. *See* ECF No. 18 at 1, 18-1 at 4; *Bode v. United States*, 919 F.2d 1044, 1053 n.8 (5th Cir.1990) (approving courts' use of the CPI-U in making cost-of-living adjustments). Plaintiff seeks attorney's fees for 45 hours of the 58.5 attorney hours that were allegedly expended on this appeal. ECF No. 18 at 2. Plaintiff has sufficiently demonstrated that the number of hours claimed for compensation is reasonable and necessary in this case. Further, Defendant does not oppose the requested amount for attorney's fees.

It is therefore **ORDERED** that Plaintiff's Motion for Attorney's Fees (ECF No. 18) is **GRANTED**.

Defendant will pay Plaintiff a total of \$9,900.00 in EAJA fees and costs in the amount of \$402.00. This amount owed is payable to Plaintiff, not directly to Plaintiff's counsel. Payment will be mailed to Plaintiff's attorney at his office: David F. Chermol, Chermol & Fishman, LLC, 11450 Bustleton Avenue, Philadelphia, PA, 19116.

Defendant's payment of this amount bars any and all claims Plaintiff may have relating to EAJA fees and expenses in connection with this action.

Defendant's payment of this amount is without prejudice to Plaintiff's right to seek attorney fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA.

It is so **ORDERED**.

SIGNED this 9th day of April, 2024.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE